

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL NO.: 07-**
v. : **DATE FILED: 7/10/07**
THOMAS D. CARBO : **VIOLATIONS:**
: **18 U.S.C. § 371 (conspiracy to defraud**
: **the United States – 1 count)**
: **26 U.S.C. § 7202 (failure to collect and**
: **pay payroll taxes - 17 counts)**
: **18 U.S.C. § 1512(c) (obstruction of justice**
: **- 1 count)**
: **18 U.S.C. § 2 (aiding and abetting)**

INDICTMENT

COUNT ONE

**CONSPIRACY TO DEFRAUD THE UNITED STATES
18 U.S.C. § 371**

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. Defendant THOMAS D. CARBO was the owner, manager, and operator of Tommy's Paving & Excavating ("TPE"), and Tommy's Towing, which were located in Wayne, Pennsylvania, and later in King of Prussia, Pennsylvania.
2. As an employer, defendant THOMAS D. CARBO was required by federal law to collect, truthfully account for, and pay over to the United States, certain payroll taxes, including his employees' federal income tax ("FIT") withholdings and Federal Insurance Contribution Act taxes ("FICA"), that is, social security and medicare taxes. Defendant CARBO also was required by federal law to pay over to the United States from his own funds a matching

amount of the FICA taxes for each employee.

3. Federal law also required defendant THOMAS D. CARBO to report the FIT and FICA withholdings on his quarterly corporate income tax returns, Internal Revenue Service Form 941.

THE CONSPIRACY

4. From in or about 2001, and continuing through in or about June 2006, in the Eastern District of Pennsylvania, defendant

THOMAS D. CARBO

conspired and agreed, together with others known and unknown to the grand jury, to knowingly defraud the United States by impeding, impairing, obstructing, and defeating the lawful governmental functions of the Internal Revenue Service of the Department of Treasury in the ascertainment, computation, assessment, and collection of revenue.

MANNER AND MEANS

It was part of the conspiracy that:

5. Defendant THOMAS D. CARBO hired employees for his businesses and decided which employees would be paid by check, which employees would be paid by check and cash, and which employees would be paid “under the table” by cash only.

6. On a weekly basis, defendant THOMAS D. CARBO caused his office employees to identify the total hours worked by his employees, and to calculate how much cash was to be paid to certain employees as defendant CARBO directed.

7. Defendant THOMAS D. CARBO caused his office employees to report to Prime Pay, defendant CARBO’s payroll service company, the hours worked and wages per hour

for those employees to be paid by check only. Prime Pay then created payroll checks for those employees.

8. Defendant THOMAS D. CARBO caused some of his office employees to create corporate checks payable to themselves in amounts of thousands of dollars, then cash the checks to generate the funds to pay employees who were to receive cash.

9. Defendant THOMAS D. CARBO made substantial cash withdrawals from his business account, in amounts of thousands of dollars, to generate additional funds to pay employees cash, to pay himself cash, and to pay business expenses.

10. Defendant THOMAS D. CARBO caused his employees to distribute the payroll checks created by Prime Pay, and to distribute cash in sealed envelopes to employees as he directed. At times, defendant CARBO himself distributed cash payroll to his employees.

11. Defendant THOMAS D. CARBO caused his office employees to improperly account for a total of approximately \$576,100 in cash payroll paid to employees as business materials or petty cash in the corporate bookkeeping system.

12. Defendant THOMAS D. CARBO failed to withhold federal income taxes and social security and medicare taxes from his “under the table” cash payroll employees, causing a total tax loss of approximately \$168,797.

OVERT ACTS

In furtherance of the conspiracy, defendant THOMAS D. CARBO and others known and unknown to the grand jury, committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1 - 17. Defendant THOMAS D. CARBO caused Prime Pay to create and file on his behalf quarterly corporate income tax returns, IRS Forms 941, which did not identify the cash wages paid to defendant CARBO's employees, and did not identify the federal income tax and social security and medicare taxes which defendant CARBO should have withheld and paid over to the United States on behalf of those employees, each tax return filing being an overt act as more fully described below:

OVERT ACT	APPROXIMATE DATE OF RETURN
1	04/30/2002
2	07/31/2002
3	10/31/2002
4	02/13/2003
5	04/30/2003
6	07/31/2003
7	10/31/2003
8	01/31/2004
9	04/30/2004
10	07/31/2004
11	10/31/2004
12	01/31/2005
13	04/30/2005
14	07/31/2005
15	10/31/2005
16	02/12/2006
17	04/30/2006

18. During 2001, defendant THOMAS D. CARBO instructed his employee, M.O., to calculate the cash payroll which he directed be paid to certain employees. On a weekly basis from approximately October 2001, through December 8, 2005, M.O. created and maintained cash payroll records on yellow legal sheets for defendant THOMAS D. CARBO's cash paid employees.

19. In early 2002, defendant THOMAS D. CARBO told M.O. that if she did not maintain the cash payroll records and distribute the cash payroll as defendant CARBO directed, she would lose her job.

20. In approximately January 2005, defendant THOMAS D. CARBO lied to his accountants when, in response to a specific request for information, defendant CARBO supplied his accountants with false information concerning his employees' gross and net wages necessary for the preparation of his year 2004 corporate income tax returns.

21. In approximately October 2005, defendant THOMAS D. CARBO lied to his accountants when, in response to a specific request for information, defendant CARBO supplied his accountants with false information concerning his employees' gross and net wages necessary for the preparation of his year 2005 corporate income tax returns, and supplied his accountants with corporate accounting records which falsely identified cash wages paid to employees as job materials and petty cash.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH EIGHTEEN

FAILURE TO COLLECT AND PAY OVER PAYROLL TAXES

26 U.S.C. § 7202

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count One of this indictment are incorporated here.
2. On or about the dates listed below, in the Eastern District of Pennsylvania, defendant

THOMAS D. CARBO

willfully failed to collect, truthfully account for, and pay over to the United States a total of approximately \$168,796, that is, his cash payroll employees' federal income tax ("FIT") and social security and medicare taxes ("FICA"), and his employer's matching share of the employees' social security and medicare taxes, in the approximate amounts more fully described below:

COUNT	DATE OF RETURN	FIT	EMPLOYEE FICA	EMPLOYER FICA
2	04/30/2002	\$ 6,190	\$ 3,382	\$ 3,382
3	07/31/2002	4,604	2,516	2,504
4	10/31/2002	3,610	1,972	1,972
5	02/13/2003	4,732	2,585	2,585
6	04/30/2003	4,732	2,585	2,585
7	07/31/2003	4,732	2,585	2,585
8	10/31/2003	4,732	2,585	2,585

COUNT	DATE OF RETURN	FIT	EMPLOYEE FICA	EMPLOYER FICA
9	01/31/2004	4,732	2,585	2,585
10	04/30/2004	4,732	2,585	2,585
11	07/31/2004	4,732	2,585	2,585
12	10/31/2004	4,732	2,585	2,585
13	01/31/2005	4,732	2,585	2,585
14	04/30/2005	4,732	2,585	2,585
15	07/31/2005	4,732	2,585	2,585
16	10/31/2005	4,732	2,585	2,585
17	02/12/2006	4,732	2,585	2,585
18	04/30/2006	4,732	2,585	2,585

All in violation of Title 26, United States Code, Section 7202.

COUNT NINETEEN

**OBSTRUCTION OF JUSTICE
18 U.S.C. § 1512(c)**

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count One of this indictment are incorporated here.
2. In or about October 2004, a federal grand jury sitting in the Eastern District of Pennsylvania was conducting a criminal investigation into allegations of corruption and financial and other crimes committed by public officials in the Borough of Norristown, Pennsylvania (“the Borough”), and several contractors who did business with the Borough.
3. On or about October 27, 2004, the federal grand jury issued a subpoena to Tommy’s Paving & Excavating, Inc. (“TPE”), which was served on defendant THOMAS D. CARBO, calling for the production of business and accounting records, including payroll records of all current and former TPE employees.
4. In response to the subpoena, defendant THOMAS D. CARBO failed to produce records responsive to the subpoena, and destroyed and concealed other records responsive to the subpoena, so that the federal grand jury and investigative agents would not learn of his under-the-table cash payroll from which no taxes were withheld or paid.

5. In or about February 2006, in the Eastern District of Pennsylvania,
defendant

THOMAS D. CARBO

corruptly destroyed and concealed, and aided, abetted, and willfully caused the destruction and concealment of payroll records, with the intent to impair their availability for use by the federal grand jury which was investigating him and his company, TPE, and otherwise obstructed and impeded the grand jury's investigation, and attempted to do so.

In violation of Title 18, United States Code, Sections 1512(c) and 2.

A TRUE BILL:

GRAND JURY FOREPERSON

PATRICK L. MEEHAN
United States Attorney